

July 15, 2005



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in WT Docket No. 05-63

Dear Ms. Dortch:

On July 15, 2005, Harold Feld of Media Access Project spoke with Barry Ohlson, Advisor to Commissioner Adelstien, regarding the above captioned proceeding.

Media Access Project voiced its support for the filing by IMWED on July 11, 2005. Mr. Feld observed that the Applicants in the merger had stated that their dominance of the BRS/EBRS band should not be considered against them in the merger, as much of the band was controlled by EBRS licensees and therefore Sprint/Nextel must negotiate for its use.

Evidence submitted by IMWED, however, demonstrates that Sprint and Nextel have already used their superior size and market power to impose terms on small EBRS licensees that compromise the educational nature of the EBRS band. Because Sprint/Nextel would be one of only three remaining significant national lessors of EBRS band service, it is rational to expect that they will exert considerable influence over EBRS licensees who are, generally, smaller and less sophisticated.

Mr. Feld observed that the Commission re-affirmed the importance of maintaining EBRS as a non-commercial service in WT 03-66. Allowing contract terms such as those described by IMWED vitiate the non-commercial nature of the EBRS service and preserve only the form, not the substance, of the Commission's rules.

Mr. Ohlson asked what remedies Mr. Feld would recommend. Mr. Feld suggested the following:

- Applicants prohibited from having lease terms longer than the license term;
- Applicants prohibited from including automatic renewal provisions, rights of first refusal, renewal at the lessee's exclusive option, or other terms that limit the negotiating power of the EBRS licensee at expiration of the license.
- Applicants prohibited from including "purchase option" provisions in the

event the Commission changes its rules and allows EBRS licensees to sell or permanently lease capacity or licenses.

- Applicants prohibited from requiring EBRS licensees to lease the maximum spectrum permitted under Commission rules, and prohibited from preventing EBRS licensees from reclaiming spectrum for educational use in accordance with Commission rules.
- Applicants required to conform all existing lease contracts to these conditions, as well as all future contracts with EBRS licensees.
- Applicants required to file unredacted copies of all leases with EBRS licensees with the Commission, and the Commission to make these available for public inspection;
- Creation of an expedited complaint process for EBRS licensees or other effected parties in the event Applicants use their market power to compel EBRS licensees to act in accordance with prohibited contract provisions despite removal of such provisions from the contract.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld
Senior Vice President

cc:
Barry Ohlson